

Transcript of the Testimony of:

FREDERICK CULLEN

Date: June 26, 2017

Case: ROD SLAPPY-SUTTON v. SPEEDWAY, LLC

DIAMOND COURT REPORTING
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROD SLAPPY-SUTTON, :

And :

JEAN SUTTON h/w :

Plaintiffs, : No.

: 2:16-cv-04765

vs. :

SPEEDWAY, LLC, :

Defendant. :

June 26, 2017

Oral Deposition of FREDERICK CULLEN,
taken at the Law Offices of Litchfield Cavo, 1515
Market Street, Suite 1220, Philadelphia,
Pennsylvania 19102, on the above date, beginning
at approximately 10:12 a.m., before Douglas S.
Diamond, Certified Court Reporter and Notary
Public in and for the Commonwealth of
Pennsylvania, there being present.

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I N D E X

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EXHIBITS

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D-4	Color Photocopy of Photograph	20

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A P P E A R A N C E S:

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(It was stipulated by and between
counsel that signing, sealing,
certification and filing be waived; and
that all objections, except as to the
form of the question, be reserved until
the time of trial.)

... FREDERICK CULLEN, having been
duly sworn, as a witness, was examined
and testified as follows ...

EXAMINATION

BY MR. FOX:

Q. Could you state your name for the
record, please?

A. Frederick Cullen.

Q. Mr. Cullen, my name is John Fox. I
represent Rod Sutton and his wife regarding an
accident that happened at the Speedway location at
258 South Easton Road in Glenside.

Have you ever given your deposition
before?

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1 A. No.

2 Q. I'm going to be asking you a number
3 of questions about any knowledge you might have
4 with this particular location and the issues that
5 are relevant to that. There's a court reporter
6 here. He's taking down my questions and your
7 answers. If you don't understand a question that
8 I ask, feel free to tell me that. I don't always
9 ask the most artful questions. So chime in if you
10 really don't understand the question. The court
11 reporter can't take down nods OF the head. So
12 you're going to have to verbally respond.

13 A. Okay.

14 Q. Also, let me finish my question
15 before you answer for the benefit of the court
16 reporter. He can't take both of us talking over
17 one another. And if you don't know an answer it's
18 simply okay to say I don't know or I don't recall
19 or any of those kind of answers. So with that, by
20 whom are you employed?

21 A. Speedway.

22 Q. For how long have you been employed
23 by Speedway?

24 A. Two years.

1 A. Work on service calls that were
2 called in to me.

3 Q. Were they still mostly -- were they
4 related to pump and tank maintenance or was it
5 broader maintenance?

6 MR. DROOGAN: Just let him finish
7 his question first. Thanks.

8 BY MR. FOX:

9 Q. Or was it broader than that?

10 A. Broader than that.

11 Q. Was the location, the Speedway
12 location at 258 South Easton, I'll just call it
13 the Glenside location, if that's okay with you.

14 The Glenside location, was that
15 location a location where you would have been
16 responsible as a lead maintenance technician?

17 MR. DROOGAN: Objection to the form
18 of that question.

19 You may answer.

20 THE WITNESS: Yes.

21 BY MR. FOX:

22 Q. Do you recall the first time that
23 you were -- that you visited that location?

24 MR. DROOGAN: Ever?

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1 Q. Where did you work before Speedway?

2 A. Mullen Contracting.

3 Q. For how long did you work at Mullen
4 Contracting?

5 A. Ten years.

6 Q. What did you do for Mullen?

7 A. Pump and tank maintenance.

8 Q. What's involved with pump and tank
9 maintenance?

10 A. Fixing gas dispensers, fixing
11 motors, working on sensors.

12 Q. And when was it that you -- you
13 said you've been employed with Speedway for about
14 two years. When was it that you were hired by
15 them?

16 A. I can't recall the exact date. I
17 think it was right in the beginning of June of
18 '15.

19 Q. June of 2015, okay.

20 And when you were hired by
21 Speedway, what was your position or title?

22 A. Lead maintenance technician.

23 Q. And what were your duties with
24 respect to lead maintenance technician?

1 BY MR. FOX:

2 Q. Since it became a Speedway?

3 A. No.

4 Q. Do you recall the reason for the
5 first time you ever visited that location?

6 A. No.

7 Q. Do you recall doing work on the
8 pump and tank or dispensers at that location in
9 September or October 2015?

10 MR. DROOGAN: Objection to the form
11 of the question.

12 You may answer.

13 THE WITNESS: No.

14 BY MR. FOX:

15 Q. I'm going to show you what I have
16 collectively marked as D-1, there's ten pages to
17 it, and ask you if you have seen those documents
18 before?

19 MR. DROOGAN: You can ask him
20 whether he's ever seen these in
21 connection with his work at Speedway.

22 MR. FOX: Yes.

23 MR. DROOGAN: That's what he's
24 asking you.

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1 BY MR. FOX:

2 Q. Have you ever seen these documents
3 in connection with your work at Speedway?

4 A. These here? (Witness indicating.)

5 Q. Yes.

6 A. No.

7 Q. You never have?

8 A. No.

9 Q. I'd like you to take a look at
10 those documents.

11 A. (Witness complies.)

12 Again, no.

13 Q. And looking at the documents,
14 generally speaking as a whole, do you know what
15 work those documents are referring to at the
16 Glenside location?

17 A. I know of the work that was
18 completed, yes.

19 Q. Were you involved in any way with
20 the work that was completed and as referenced in
21 these documents that's have been marked as D-1?

22 A. Not at all.

23 Q. Do you know why your name is listed
24 on some of the documents as the maintenance

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1 MR. FOX: Yes.

2 THE WITNESS: Like before it
3 started, when they were going to do it?

4 BY MR. FOX:

5 Q. That's a good question. Did you
6 know that this work was requested by Speedway from
7 Crompco to do this work?

8 A. No.

9 Q. Did there come a point in time
10 where you became aware that this work was being
11 performed by Crompco?

12 A. When it was done?

13 Q. Well, how about as it was being
14 done?

15 A. No, not that I recall.

16 Q. So just to clarify, so when this
17 work was being done as described in Crompco's
18 document listed as Page 4 and 5 you did not have
19 any knowledge that this work was being done?

20 A. Not that I recall.

21 Q. Did there come a time when you
22 became aware of the work that was performed by
23 Crompco?

24 MR. DROOGAN: At this store?

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1 technician?

2 A. Yes.

3 Q. And why is that?

4 A. Because I was the maintenance
5 technician for the store whenever this was printed
6 out.

7 Q. So just so looking -- if you go --
8 I've just handwritten the pages, the page numbers.

9 Going to Page 4 --

10 A. (Witness complies.)

11 Q. -- it appears to be a document
12 generated by Crompco. Do you know who Crompco is?

13 A. Yes.

14 Q. Who are they?

15 A. It's a contractor that we use.

16 Q. All right. And the work that's
17 described on Pages 4 and 5 of the exhibit, were
18 you familiar with that work that was being
19 performed by Crompco?

20 A. I'm not sure I understand.

21 Q. Well, did you know that this work
22 was going on as described in this document?

23 MR. DROOGAN: Do you mean when it
24 was ongoing?

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1 MR. FOX: Yes, Glenside.

2 THE WITNESS: While it was ongoing?

3 BY MR. FOX:

4 Q. No. At any time. When was the
5 first time you became aware that the work --

6 A. Well, I know that this work was
7 completed.

8 Q. Okay. How is it that you became
9 aware that the work was completed?

10 A. As a maintenance technician we work
11 on all of the equipment in these stores. And when
12 -- I'm not sure what day, but sometime I arrived
13 there to work on the tank monitoring system and it
14 was a new tank monitoring system.

15 Q. And when you were there, did you
16 take notice of -- well, let me strike that.

17 Did you have any knowledge as to
18 whether as part of the work Crompco needed to
19 build a conduit trench?

20 A. Could you say that again?

21 Q. Were you aware as part of the work
22 that was done by Crompco at this location whether
23 Crompco constructed a conduit trench?

24 A. I was unaware of it before they

Page 13

1 started, so, no.

2 Q. As a maintenance technician for
3 this location for the two years -- when you
4 started there, how often would you be called out
5 to that location to take care of a maintenance
6 issue?

7 A. That could vary. It could be no
8 times a week or it could be ten times a week.

9 Q. And what is that process by which
10 you are notified of a problem at that particular
11 location for which you need to react and go there?

12 A. If it's critical I would be
13 alerted. If it's just something normal I just
14 would get it on my phone through our system.

15 Q. Do you have a company work van that
16 you work from?

17 A. Yes.

18 Q. Do you have a partner that you work
19 with or are you on your own?

20 A. I'm on my own.

21 Q. So just so I'm clear, the work
22 that's described in these documents from Crompco
23 and even Speedway, you had nothing to do with that
24 work?

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1 A. I had nothing to do with this work,
2 no.

3 Q. Okay. Do you have interaction as a
4 maintenance -- as a maintenance technician, do you
5 ever have any interaction with Crompco on work
6 that they're doing at any particular location?

7 A. Yes.

8 Q. What situations would it be that
9 you would have interaction with Crompco?

10 A. Retesting. When they go out to
11 test our equipment sometimes during the retest
12 I'll be present. That's not mandatory.

13 MR. FOX: Mark this as D-2, please.

14 ---

15 (Whereupon, Exhibit D-2 was marked
16 for identification.)

17 ---

18 MR. DROOGAN: Are these photos
19 taken by your expert?

20 MR. FOX: Yes.

21 MR. DROOGAN: Do you mind if I --
22 because I haven't seen these before
23 other than small photos in the report.

24 Do you mind if I just see them?

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1 MR. FOX: Yes. They're not the
2 greatest. And I just printed them off
3 into my printer.

4 MR. DROOGAN: Thank you.
5 Just off the record.

6 ---

7 (Whereupon, a discussion took place
8 off the stenographic record.)

9 ---

10 BY MR. FOX:

11 Q. Mr. Cullen, the paperwork that was
12 referenced in D-1 appears from my reading of that
13 that Crompco was required to run a ditch for the
14 conduit lines relating to the work that they did
15 at that location. And looking at D-2, do you know
16 whether that where you see the white narrower
17 cement line near the curb, did you take notice of
18 that after their work was completed?

19 MR. DROOGAN: Objection to the form
20 of the question. From a technical
21 standpoint you said run a ditch. I
22 think you meant to say they dug a ditch.

23 MR. FOX: Dug a ditch. Thank you,
24 Mike.

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1 MR. DROOGAN: What he's asking you
2 is did you see the area that was the
3 result of a trench that was dug for the
4 placement of conduit?

5 THE WITNESS: Yes.

6 BY MR. FOX:

7 Q. And when did you first take notice
8 of the trench that they dug for the conduit lines?

9 A. When I first arrived on the site
10 probably.

11 Q. Was the work completed? Do you
12 have a recollection of whether the work was
13 completed or was it still ongoing when you first
14 noticed?

15 A. Not that I recall.

16 Q. Did you ever have any conversations
17 with the Crompco people that were doing the work
18 about the lines that they were running?

19 A. No.

20 Q. Did you know what they were for?

21 MR. DROOGAN: Before the work was
22 done or eventually?

23 MR. FOX: Eventually, at any time.

24 THE WITNESS: Yes, I know what it

Page 17

1 was for.
 2 BY MR. FOX:
 3 Q. And what were they for?
 4 A. Wires, conduit.
 5 Q. Relating to the --
 6 A. Tank.
 7 Q. -- tank?
 8 A. Monitoring upgrade.
 9 Q. Do you know what the station was
 10 before, you know, not was, but who owned the
 11 station before Speedway owned the station?
 12 A. Hess.
 13 Q. After the work was completed, did
 14 you take notice -- did you have -- strike that.
 15 Did you have any conversations with
 16 Crompco personnel about the final condition of the
 17 surface of the trench?
 18 A. No.
 19 Q. Did you ever have any conversations
 20 with anyone at Speedway about the condition of the
 21 finished product?
 22 A. Not that I recall, no.
 23 MR. DROOGAN: This is D-3?
 24 MR. FOX: Yes, we'll make it D-3.

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1 MR. DROOGAN: D-3 is a photograph
 2 of the side of the Hess store or
 3 Speedway store in Glenside.
 4 ---
 5 (Whereupon, Exhibit D-3 was marked
 6 for identification.)
 7 ---
 8 BY MR. FOX:
 9 Q. Now, in that picture it appears
 10 that the conduit lines were run around the side of
 11 the building and under a door.
 12 Does that look like that to you?
 13 A. No. It's next to the door.
 14 Q. Okay. And what is it running into,
 15 those lines?
 16 A. What are these conduit, where are
 17 they built into the wall?
 18 Q. Right.
 19 A. To the tank monitor.
 20 Q. As a maintenance technician, would
 21 your responsibilities include painting a curb?
 22 A. No.
 23 Q. Do you know, if you know, if a curb
 24 was painted whose responsibility that would be?

Page 19

1 MR. DROOGAN: Objection to the form
 2 of the question.
 3 You may answer.
 4 THE WITNESS: Painting is up to
 5 store personnel.
 6 BY MR. FOX:
 7 Q. Have you ever had any conversations
 8 since the completion of the work by Crompco with
 9 store personnel with respect to painting the curb?
 10 A. At this particular site?
 11 Q. Yes.
 12 A. Not that I recall.
 13 Q. Have you ever had any conversations
 14 with Speedway store personnel at other stores with
 15 respect to painting that curb?
 16 A. Not that I recall.
 17 Q. As a maintenance technician, would
 18 it be your responsibility, or not responsibility,
 19 but would one of your duties include observing
 20 unsafe conditions on the property?
 21 A. Yes.
 22 Q. And, for example, can you give me
 23 some examples of that?
 24 MR. DROOGAN: Things that he's

Page 20

1 found to be deemed unsafe?
 2 MR. FOX: Yes, just generally
 3 speaking.
 4 BY MR. FOX:
 5 Q. Not this location, but just
 6 generally speaking?
 7 A. Maybe like an oil spill, a pothole,
 8 or an out-of-order dispenser, anything
 9 structurally wrong anywhere, just anything I can
 10 observe.
 11 MR. FOX: And I'll have this as
 12 D-4.
 13 ---
 14 (Whereupon, Exhibit D-4 was marked
 15 for identification.)
 16 ---
 17 BY MR. FOX:
 18 Q. I'm showing you what's been marked
 19 as D-4. Okay? And do you see the white strip in
 20 front of the sidewalk in front of the store?
 21 A. Yes.
 22 Q. Okay. The strip that is there,
 23 would you agree that it is similar in color to the
 24 curb?

Page 21

1 MR. DROOGAN: Object to the form of
2 the question. He's not here as a -- you
3 can ask him, but he's not offering any
4 opinions here.

5 MR. FOX: I'm not asking --

6 MR. DROOGAN: Based solely on this
7 photograph?

8 MR. FOX: Yes.

9 THE WITNESS: Would you repeat it?

10 BY MR. FOX:

11 Q. Would you agree that the strip,
12 that strip, I'm not going to say how wide it is
13 because I don't know if you know how wide it is,
14 but the strip that runs in front of the curb
15 that's next to the macadam?

16 A. It's concrete.

17 Q. I understand that.

18 A. I mean, they're both concrete, but
19 I can tell a difference, if that's what you're
20 asking.

21 Q. Yes. And have you ever -- since
22 this work was done, have you ever had any
23 conversations with any of the store employees,
24 management, store manager I meant or assistant

Page 23

1 this location since the completion of that work?

2 A. Yes.

3 Q. Were you there between, you know,
4 when it was completed and January of 2016?

5 A. Repeat that.

6 Q. Were you there between the time
7 that the work was completed in September or
8 October 2015 and when this accident happened,
9 which was January 2016?

10 MR. DROOGAN: January.

11 THE WITNESS: Yes.

12 BY MR. FOX:

13 Q. And when you were there, did you
14 notice the strip that was created by Crompco for
15 running the conduit lines?

16 MR. DROOGAN: The trench?

17 MR. FOX: The trench.

18 THE WITNESS: Yes.

19 BY MR. FOX:

20 Q. And in your visits during that time
21 frame, did you ever have any discussion with
22 anyone at the store with respect to that trench
23 for any reason?

24 A. No.

Page 22

1 manager about whether that is a safety issue, that
2 condition is a safety issue?

3 A. Not that I recall, no.

4 Q. Did you ever recommend to the
5 manager or assistant manager or anyone who works
6 at the store that either the macadam -- strike
7 that -- that that area, that white -- that strip
8 in front of the curb should be sealed with black
9 or that the curb should be painted yellow?

10 A. No, not that I recall.

11 Q. Who do you report to?

12 A. Our maintenance manager.

13 Q. Who's your maintenance manager?

14 A. Paul Evac.

15 Q. Was Paul Evac the maintenance
16 manager in October 2015?

17 A. I'm unsure.

18 Q. Who is Bob Doyle?

19 A. Maintenance Manager Region 74.

20 Q. Would that include Glenside?

21 A. No.

22 Q. This work, according to the
23 paperwork, looks like it was done in September and
24 October of 2015. Do you know whether you were at

Page 24

1 Q. Now, it's my understanding that
2 that curb at the store is now painted yellow.

3 Are you aware of that?

4 A. Yes.

5 Q. How did that come about? Or let me
6 ask you this. Did you have any involvement with
7 that at all?

8 A. No.

9 Q. You had no involvement with respect
10 to it being requested or performed?

11 A. No, none at all.

12 Q. Do you know whether the trench, for
13 lack of a better word, has that ever been covered
14 with blacktop up to the curb?

15 A. I mean, I don't know about right
16 now because I'm not there, but that I'm aware of
17 it's the same color it is in this picture.

18 MR. DROOGAN: Similar?

19 THE WITNESS: Similar.

20 BY MR. FOX:

21 Q. And when -- this location is no
22 longer in your area, I guess, for maintenance
23 responsibilities, Glenside?

24 A. Excuse me?

Page 25

1 Q. Glenside is not -- this Glenside
2 location is no longer a location for you to handle
3 as a maintenance tech?

4 A. No. It is a store that I handle,
5 yes.

6 Q. Oh, it's still a store?

7 A. Yes.

8 Q. Okay. And, as far as you know,
9 that trench condition is still the same?

10 A. The last time I was there the
11 trench was still there.

12 Q. All right. Did you ever learn that
13 my client, Mr. Sutton, had an accident at that
14 location?

15 MR. DROOGAN: Other than from me?

16 MR. FOX: Other than from you,
17 right.

18 MR. DROOGAN: Other than from me.

19 THE WITNESS: Not that I recall.

20 BY MR. FOX:

21 Q. So other than speaking to your
22 counsel you had never had a conversation with the
23 manager or the assistant manager or any of the
24 workers at the location about this incident?

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1 A. I believe I may have been alerted
2 to it through my phone. I'm unsure, though.
3 Sometimes we get a hold order for something. I've
4 seen lawsuits on my phone before because my name
5 was on a bill that I got drug into.

6 MR. DROOGAN: That comes from
7 counsel, though.

8 THE WITNESS: Yeah, I'm unsure
9 where it comes from.

10 BY MR. FOX:

11 Q. Okay. The work that is completed
12 by Crompco, and, in particular, what's referenced
13 in D-1, is there anyone from Speedway that you're
14 aware of that inspects the work before they sign
15 off as a completed job?

16 MR. DROOGAN: Object to the form of
17 the question.

18 You may answer.

19 THE WITNESS: No, I don't know who
20 that person is.

21 BY MR. FOX:

22 Q. Does anyone do it?

23 A. Not that I --

24 Q. Does anyone check their work?

Page 27

1 A. Not that I'm aware of.

2 Q. You earlier said that you might do
3 some retesting of the work that they did.
4 Is that different?

5 A. It's different than what we're
6 talking about here.

7 Q. Right.

8 A. This is on gas dispensers. Certain
9 states have certain laws.

10 MR. FOX: Okay. That's all I have.
11 Thank you.

12 ---

13 (Whereupon, the deposition
14 concluded at 10:49 a.m.)

15 ---

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1 CERTIFICATION

2
3
4
5 I, DOUGLAS S. DIAMOND, hereby
6 certify that the foregoing is a true and correct
7 transcript transcribed from the stenographic notes
8 taken by me on Monday, June 26, 2017.
9

10
11
12 DOUGLAS S. DIAMOND
13 Court Reporter - Notary Public
14 (This certification does not apply
15 to any reproduction of this transcript, unless
16 under the direct supervision of the certifying
17 reporter.)
18
19
20
21
22
23
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